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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Oakville, Raymond and
South Bend, Washington)

) MM Docket No. 00-41

) RM-9369

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To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SUPPLEMENT TO REPLY COMMENTS

On September 3, 1998, a Petition For Rulemaking was filed in this proceeding by Jodesha Broadcasting, Inc. ("Jodesha"). Subsequently a Notice of Proposed Rulemaking ("NPR") (DA 00-543, released March 10, 2000) was issued establishing this Docket. Comments were then filed on May 3, 2000, by both Jodesha, proponent of the subject rulemaking proposal, and by 3 Cities Inc., licensee of KXXO(FM) in Olympia, Washington ("3 Cities"). Finally, on May 18, 2000, Reply Comments were also filed by both parties.

Although that would normally complete the pleading cycle, it is noted that Jodesha introduced a host of new facts, for the very first time, in its Reply pleading, new facts wholly inappropriate to be introduced at the Reply stage of this proceeding and wholly unfair to other parties such as 3 Cities who had never seen such allegations before nor had any chance to consider or comment upon them. For that reason, as further discussed below, it is necessary in the interests of fairness and

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equity as well as to assure a complete record, for 3 Cities to file the instant Supplement directed to those newly submitted facts. To the extent that leave may be required to file in such a case, such leave is hereby requested for the reasons as set forth herein.

I. Background

The common and required procedure in rulemaking proposals filed with the Commission is for the proponent to set forth its request and the full factual basis for that request in its initial Petition. In requesting a change in the Table of Allotments to allocate a new FM radio channel to an alleged community which has not previously been determined to be a community by the FCC for purposes of channel allocation, it is essential for the proponent to address that point, submitting such facts as necessary for the Commission to make such a required ab initio factual determination.

In its original Petition the sole sum and "substance" of factual data offered by Jodesha upon which to determine whether "Oakville" met the FCC definition of a "community" for allocation and licensing purposes was a footnote that indicated the following:

"Oakville is an incorporated community with a population (1990 Census) of 665, it has local fire and police departments, a public library, and a municipal court and, thus, qualifies as a community for allotment purposes.

Even if all that had been true (which it was not),^{1/} there is no way that such a spare description of an alleged new "community" could be held as legally sufficient for the Commission to make its required factual determination on that point.

In its Comments in Opposition to the rulemaking proposal filed on May 3, 2000, 3 Cities noted that the alleged 1990 "census" population had been wrongly stated and that it was actually 493 persons and not the "665 persons" that had been indicated by Jodesha (an inflation of 35% over the correct number) and noted further the fatal absence of information as to businesses existing to serve the needs of "Oakville" or of the required showing of a nexus between the political, social, and commercial organizations claimed to exist in a community. Citing Pleasant Dale, Nebraska, DA 99-2246, released by the Commission in late October of 1999, 3 Cities suggested that Jodesha clearly and conclusively failed the test to establish Oakville as a community for FCC allocation purposes.

In its own Comments filed on May 3, 2000, Jodesha added nothing more to its original statement on "Oakville" ^{2/} and in

^{1/} The "census" figure was inflated by more than 35% over the true 1990 U.S. Census figure; the firehouse is unmanned; and the police, library, and court are all rooms in the same small one-story building.

^{2/} Nor, for that matter, did it offer any commitment to build or operate a station on a new allocation it had requested for South Bend, Washington, another basic deficiency that had also existed in its original proposal as filed, and left unchanged in its Comments.

its Reply pleading filed on May 18, 2000, 3 Cities responded to what Jodesha had filed.

II. New Facts Introduced by Jodesha in Its Reply

In Jodesha's Reply, however, it asserted, for the first time ever, a list of new facts supported by the Declaration of William J. Wolfenbarger, offered to seek to demonstrate the acceptability of "Oakville" as a "community" within the FCC's definition. We submit that even if these new allegations are considered, they fail to establish "Oakville" as a legitimate community for allocation purposes.

III. Analyses of the New Facts

In considering the new facts alleged by Jodesha, 3 Cities sent one of its own employees, Jarrod Losk, to Oakville to see for himself what was really there. His Declaration is attached hereto, along with supporting photographs 1 through 4, and as Attachment 5, a letter deposited at the Oakville post office and then received back postmarked "Olympia", NOT "Oakville". Some of the salient facts found by Mr. Losk: Oakville was described as a "bedroom community"; It has no traffic lights; it has no movie theater. It has no hospital and its fire house is actually marked as a "non-manned station" with instructions to call "911" in case of an emergency. If you tried to look up Oakville in the Rand McNally Road Atlas (1998 Edition), you would find nothing since it is not included in their list of cities and towns in the state of Washington.

The city hall, police station, courthouse and library mentioned by Jodesha are all different rooms in a single one one-story building estimated at approximately 1500 to 2000 square feet in size. There were no municipal services or "programs" found that were provided by the city for senior citizens, children, or any other group.

There is no daily newspaper and no weekly newspaper. The only "paper" of any kind circulated in Oakville is the "Oakville Cruiser" published on a monthly basis whose largest commercial advertisements are actually from neighboring towns such as Rochester and Centralia. There were newspaper boxes located out in front of the Texaco gas station that included "The Olympian" (a daily newspaper from Olympia, Washington), USA Today, and the Seattle Post-Intelligencer. No box for the "Oakville Cruiser".

As Jodesha's own Declaration shows, the Businesses claimed for Oakville are almost all small service types (gas station, restaurants, bars, hardware store antique stores) that are as useful to serving the needs of those passing through from neighboring towns as they are to people actually living in Oakville.

In its Reply pleading and in the Wolfenbarger Declaration, Jodesha seeks to take credit for neighboring cities as long as they are located in the same Gray's Harbor County. That is not the way it works. The request has been for Oakville, not for seven other communities listed as part of the Council of Governments for the County. Oakville must stand or fall by

itself. Risner Broadcasting, Inc. 20 FCC 2d 790 at 791-2, 795 (1969).

Taking it a step farther, Jodesha then complains that other surrounding communities have FM radio stations, and that Oakville should have one too, to put it on "an equal footing". Jodesha notes that of the 9 communities in Gray's Harbor County, four have an existing station and two more have a vacant allocation.^{3/} We list below the cities referred to by Jodesha but in this list we also include the 1990 U.S. Census figures:

<u>Community</u>	<u>Population</u>
Aberdeen	16,565
Elma	3,011
Hoquiam	8,972
McClearey	1,235
Westport	1,892 *
Ocean Shores	2,301 *
Montesano	3,064 **
Oakville	493

* Indicated by Jodesha as an existing vacant allotment

** Indicated by Jodesha as proposed in an outstanding NPR

Does anything jump out of this list that could possibly explain why the other communities have been recognized as such for FCC allocation purposes and Oakville should not?

On the subject of Oakville as a community we would reiterate what we said in our original Comments of May 3, 2000, that even

^{3/} The fact that there are presently already two vacant allotments in the same County (to much larger communities) and yet another allotment already proposed to another town more than six times larger than Oakville, provides further reason to question the basis for the requested new allotment to "Oakville".

considering the additional facts submitted by Jodesha in its Reply, the Pleasant Dale case remains controlling here and that Jodesha has simply failed to meet the test to establish Oakville as a community for FCC allocation and allotment purposes.

IV. Other New Matters Raised by Jodesha

That leaves just two other observations to make. On page 6 of its Reply, Jodesha claims it is "ludicrous" for 3 Cities to suggest that the proposed move from Raymond to a point approximately 20 miles closer to Olympia at Oakville would result in an increased identification and service to Olympia since it is, at least for now, proposing to use the same transmitter site. "Ludicrous" is a good word for the situation but wrongly applied. It is truly ludicrous for Jodesha to seek to ignore the controlling fact here that its allowable transmitter location is determined by Section 73.315(a) of the FCC rules which require city grade signal to the city of license. Once the city of license is changed to Oakville, Jodesha would then be free to move its transmitter and signal at any convenient time as far into Olympia as it wanted to, so long as it placed the city grade signal over Oakville, approximately 20 miles closer to Olympia than Raymond.

Lastly, as to the proposed new allocation to South Bend, we note that Jodesha has finally, in Reply Comments, indicated it would apply for a new allocation there to replace the existing operating station it proposes to remove. We think that is too little too late. But if the Commission should arguendo allow

Jodesha to make such a last minute representation and recognize it in this proceeding, we note that the representation at the bottom of page 7 of the Reply pleading is not the same as the representation on page 5 of the attached Wolfenbarger Declaration.

While the pleading states without qualification that Jodesha would not seek to implement any other change until a new station in South Bend is operational, Mr. Wolfenbarger, principal of Jodesha, is not so sure. In his Declaration this commitment is hedged by "unless" due to a delay by some unspecified third party, Jodesha would just have to go ahead on its other requests whether radio service had yet been restored to South Bend or not.

We do not think that Oakville meets the FCC definition of a community, that the move is only to change the Raymond station to a de facto Olympia station, and that the removal of South Bend's only operating station is too high a price to pay for all this. Such being the case, we think the proposal should be denied. If arguendo, it is further considered by the Commission, we submit that any such consideration must include a firm and complete commitment to restore service in South Bend before anything else is considered or implemented, without any of the qualifications or "unless" disclaimers as included in the Wolfenbarger Declaration.

V. Conclusion

Wherefore, 3 Cities, Inc. respectfully requests that the above arguments be considered as a Supplement to the 3 Cities Reply Comments in this case, and for the reasons stated therein, and in earlier pleadings, that the Jodesha rulemaking proposal be rejected and dismissed.

Respectfully submitted,

3 CITIES, INC.

by



Robert J. Buenzle

Its Counsel

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June 30, 2000

DECLARATION

Jarrold Losk, under penalty of perjury, hereby states and declares the following:

On June 2, 2000, I made a personal visit to the area referred as "Oakville, Washington. I also made a follow up visit to Oakville on June 14. During my visits I also took photographs of the main street of Oakville looking in two directions (marked as photos "#1 and #2 attached), a photo of newspaper sale boxes (Photo #3) and a photo from the window of the unmanned fire station (photo #4). During my visits I spoke with several people, including the postmaster and the manager of the bank. The report of what I found in my personal visits is set forth below:

In my conversations, Oakville was referred to as a "bedroom community" with many of the local residents using the nearby town of Elma for their daily needs. Oakville has no traffic lights. Oakville has no movie theater. A letter deposited for mail at the Oakville "post office" is then transported to Olympia where it receives an "Olympia" postmark. I mailed myself a letter at the Oakville post office and it arrived several days later postmarked "Olympia" (attached hereto).

There is no hospital or any other facility in Oakville to respond to any serious illness and residents of Oakville use the hospital located in Centralia.

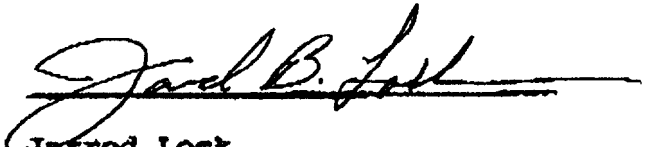
The "city hall", police station, courtroom, and library are all located within one small one-story building, with a total size of approximately 1500-2000 square feet. I could find no evidence of any social services provided by Oakville to its senior citizens, children, or general population. There is a combined middle school/high school located in Oakville with approximately 90 middle school students and 91 high school students. Approximately 30% of the Oakville children attend middle and high school outside of Oakville.

Recreation provided by Oakville appears to be limited to a small grassy area designated as the Al J. Brant park. I could find no evidence of any recreational services or programs offered by the city of Oakville to anyone.

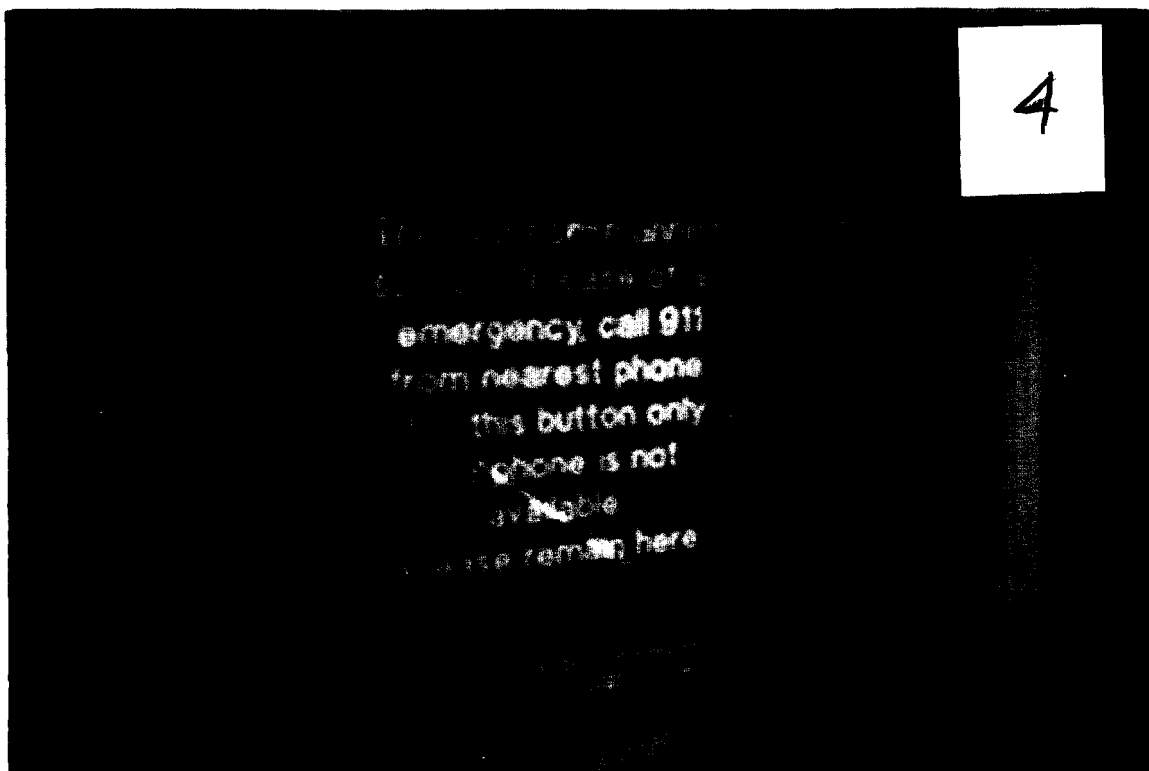
There is no daily newspaper in Oakville. There is also no weekly newspaper in Oakville. The newspaper stand located in front of the gas station offers for sale "the Olympian" (a daily newspaper from Olympia, Washington), USA Today, and the Seattle Post-Intelligencer.

The above statements of fact are true and correct to the best of my own personal knowledge and belief.

Signed and dated this 28 day of June, 2000.


Jarrod Losk



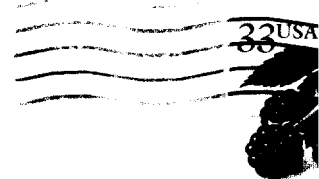
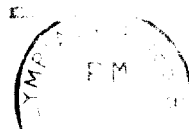


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P.O. Box 7937

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Oakville WA. 98568



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PO BOX 7937

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98507X7937



June 14, 2000

I Jarrod Losh am in
Oakville. I am mailing this at
the local post^{office}master.

Jarrod Losh

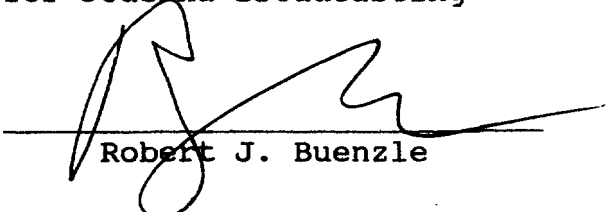
Stu Ray
Postmaster Oakville

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Supplement To Reply Comments have been served by United States mail, postage prepaid this 30th day of June, 2000, upon the following:

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